

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

**SUPERIOR COURT
CIVIL ACTION NO:**

Kevin Gamst

Plaintiff

v.

Boston University

Defendant

COMPLAINT AND JURY DEMAND

RECEIVED

9/20/23

tc

Nature of the Case

1. Plaintiff files this lawsuit for disability (1) discrimination and failure to accommodate under the Americans with Disabilities Act, 42 U.S.C. § 12203(a); and (2) handicap discrimination pursuant to M.G.L c. 151B, § 4, (3) interference with the Plaintiff's exercise of rights under the Family Medical Leave Act, 29. U.S.C. § 2601, et seq, interference with the Plaintiff's exercise of rights under the Massachusetts Paid Family and Medical Leave Act, M.G.L. 175M, against Boston University. Gamst suffers from symptoms of "long haul covid" which resulted in a hospital stay and subsequently a request for accommodation upon returning to work. Boston University failed to accommodate him and ultimately terminated him.

Jurisdiction and Venue

2. The Court has jurisdiction over the discrimination complaint pursuant to M.G.L. c. 151B, §9. Plaintiff filed a complaint with the Massachusetts Commission Against

Discrimination (MCAD), Docket No. 23BEM01125 and EEOC Number 16C-20223-01390.

3. The Court has jurisdiction to hear federal claims pursuant to the Supremacy Clause of Article VI of the U.S. Constitution
4. Venue is proper in Middlesex County as Plaintiff resides in Middlesex County.

Parties

5. Plaintiff Kevin Gamst (“Gamst”) is a natural person currently residing in North Reading, Massachusetts.
6. Defendant Boston University (“University”) is a non-profit institution duly organized by law, operating a university in the City of Boston, Suffolk County, MA.

Facts

7. Gamst began working for the University in 2019 as a plumber/steam fitter.
8. During that time Gamst earned a reputation as an exemplary employee with no issues of discipline and positive performance evaluations.
9. As a full time employee as soon as he completed two years of service, Gamst was automatically enrolled in the Long Term Disability Plan (“LTD”)
10. LTD was paid for entirely by the University.
11. In December of 2021, Gamst contracted COVID-19, and as result suffered a serious health issue that required hospitalization for 12 days.
12. As a result, he was unable to work during that time, and was placed on leave from work for the University.
13. Gamst was approved for FMLA leave on December 3, 2021, until March 8, 2022.
14. On March 9, 2022, he was denied FMLA leave as his time had been exhausted.

15. Gamst was also approved for PFMLA on December 3, 2021, until May 3, 2022.
16. Gamst was denied PFMLA on May 4, 2022, as his time had been exhausted.
17. Gamst continued his medical treatment during his leaves, including meetings with specialists in addition to his primary care team, in an effort to recover and return to work.
18. On May 9, 2022, the University notified him that his PFMLA leave was exhausted and if he could return to work by June 9, 2022, with or without an accommodation, he should work with the Equal Opportunity Department or Boston University Occupational Health Center (“OHC”).
19. Gamst contacted OHC regarding his return to work and was told to have his medical provider return the necessary information.
20. Gamst received a Medical Clearance for Return to Work from OHC and had his medical provider return it on or about May 20, 2022.
21. While his symptoms were expected to improve, his reasonable accommodation request included, 1. Not to climb ladders, 2. Limited to carrying less than 20 pounds. 3. Cannot cover entirety of campus independently, 4. Ideally a motorized vehicle or cart would help.
22. On June 2, 2022, Gamst received a letter via email from Abby Asani of the University’s Equal Opportunity Office (“EOO”), which noted that he may need an accommodation.
23. The letter outlined the process for requesting an accommodation, noting the University would engage in an interactive dialogue to explore accommodations.

24. The letter concluded by requesting that Gamst submitted an online submission form, and Request for Information for ADA Reasonable Accommodations Form, and gave a June 16, 2022, deadline to submit these for review.
25. Gamst provided this information to his medical provider and submitted it back to EEO on or about June 6, 2022.
26. The ADA Reasonable Accommodations Form as completed by his medical provider, noted that Gamst was cleared to return to work with a reasonable accommodation.
27. The accommodation included, 1. Maximum of lifting 20 pounds, 2. No walking in excess of 10 minutes at one time, and 20 minutes in an hour, 3. No running or jumping.
28. The form also listed the accommodation should run from June 9, 2022, until December 9, 2022, and it was unknown when Gamst could return without accommodation.
29. On June 8, 2022, Gamst received a letter from Matrix Absence Management (“Matrix”) requesting that he submit, 1. Authorization for Use in Obtaining Information form, 2. Direct deposit form, 3. Provider care List. 4. W4.
30. The letter gave Gamst until July 25, 2022, to submit this information.
31. The letter was closed, “Sincerely, LTD Claims Department”.
32. On June 10, 2022, Gamst was contacted by Gregg Hanscom of the University’s Human Resource Department.
33. Hanscom informed Gamst that EEO determined that Gamst had “continuing restrictions of an unknown duration and are not able to return to work at this time. You are scheduled to receive notification from the department today, (Bill Walter).

Your next is to apply for LTD and we encourage you to work with Matrix and/or EOO for any appropriate process.”

34. On or about June 13, 2022, Gamst submitted the requested information to Matrix.

35. On June 16, 2022, Gamst contacted Asani asking why he was being pushed to LTD.

36. Asani responded that she was “... doing research to figure out which department your request best falls under as you been interacting with a few different offices.” She continued with “... I am also in the process of creating a supplement form for your provider as the information they provided was not clear given your stated request. I will be updating you early next week with the next steps.”

37. On June 21, 2022, Asani emailed Gamst, indicating that “long term disability is a leave option for all employees, if that is a route they choose and need to explore.”

38. Her email went on to note that Gamst’s department was unable to accommodate him safely, and he needed to submit a supplemental questionnaire medical form, which would be considered a new request.

39. Also on June 21, 2022, Gamst received a letter from Matrix Absence Management, that his Long-Term Disability Benefit was under review as they had received his medical information, and that information was being reviewed to determine his eligibility.

40. On June 22, 2022, Gamst emailed Gregg Hanscom noting that he had not received anything from Bill Walters yet, despite Hanscom indicating he would on June 10, 2022. Gamst also questioned why Asani was requesting a resubmission of his medical records.

41. Gamst received an auto-response from Hanscom that he was out of office until June 23, 2022. No further response was received.
42. Some time after June 23, 2022, Gamst received a letter dated June 14, 2022, from William Walter notifying him that the University was unable to hold his position beyond June 14, 2022.
43. The letter noted that “It is important to understand that this does not affect your ability to apply for LTD and we encourage you to work with Matrix and/or EOO for any appropriate reason.”
44. On July 19, 2022, Gamst received a letter from Matrix informing him that the LTD request had been denied.
45. The letter indicated that his medical file had been reviewed but “The Clinician assed(sic) the medical does not support an inability to perform work in your own occupation as a Plumber/Steamfitter as of your anticipated reported return to work date of May 9, 2022. Your claim is therefore denied in its entirety.”
46. On or about October 17, 2022, Gamst through counsel sent a letter to Hanscom outlining his claims of discrimination, failure to accommodate, and disparate treatment.
47. In a letter dated April 1, 2022, Gamst through counsel filed a claim of Disability/Handicap Discrimination, Disparate Treatment, and Wrongful Termination.
48. Through their work share agreement, the complaint was dual filed at the Massachusetts Commission Against Discrimination (“MCAD”) and Equal Employment Opportunity Commission (“EEOC”).

49. On June 27, 2023, the MCAD dismissed the case finding the Commission lacks jurisdiction over the case pursuant to 804 CMR 1.08(1)(c)(2020).

50. No further information was requested or provided prior to the dismissal.

51. On June 29, 2023, the EEOC issued a dismissal of the Charge and provided a Notice of Right to Sue.

Count I

Violation of the Americans with Disabilities Act 42 U.S.C. § 12201 et seq.

52. Plaintiff re-alleges and incorporates by reference the above allegations.

53. The Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12201, prohibits discrimination on the basis of disability.

54. Defendant is an employer covered by the ADA, 42 U.S.C. § 12211(5).

55. Plaintiff is an employee covered by the ADA.

56. Plaintiff was entitled to a reasonable accommodation to allow him to return to work.

57. Defendant discriminated against the Plaintiff on the basis of the disability by failing to meaningfully engage with him about an accommodation for his disability, forcing him to apply for long term disability coverage rather than accommodating his disability, exacerbating his mental, emotional, and physical distress by refusing to allow him to return to work, and issuing a letter that his position would no longer be available to him.

58. Plaintiff has suffered and will continue to suffer damages as a result of the discrimination for which the Defendant is liable.

Count II

Retaliation in Violation of the Americans with Disabilities Act 42 U.S.C. § 12201 et seq.

59. Plaintiff re-alleges and incorporates by reference the above allegations.

60. The Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12201, prohibits retaliation against an employee for exercising rights under the law.
61. Defendant retaliated against the Plaintiff by treating him less favorably than other employees, denying his long-term disability request, and terminating his employment after he requested accommodation for his disability.
62. The facts, including the close proximity in time between Plaintiff’s protected activity and the adverse action, show a causal connection between the two.
63. Plaintiff has suffered and will continue to suffer damages as a result of the retaliation for which the Defendant is liable.

Count III
Handicap Discrimination M.G.L c. 151B, § 4

64. Plaintiff re-alleges and incorporates by reference the above allegations.
65. M.G.L. c. 151B, § 4(16) prohibits discrimination on the basis of disability.
66. Plaintiff was entitled to a reasonable accommodation to allow him to return to work.
67. Defendant discriminated against the Plaintiff on the basis of the disability by failing to meaningfully engage with him about an accommodation for his disability, forcing him to apply for long term disability coverage rather than accommodating his disability, exacerbating his mental, emotional, and physical distress by refusing to allow him to return to work, and issuing a letter that his position would no longer be available to him.
68. Defendant deliberately disregarded Plaintiff’s rights under M.G.L. c. 151B and interfered with his right to a workplace free from discrimination.
69. Plaintiff has suffered and will continue to suffer damages as a result of the discrimination for which the Defendant is liable.

Count IV
Retaliation M.G.L c. 151B, § 4

70. Plaintiff re-alleges and incorporates by reference the above allegations.
71. M.G.L c. 151B, § 4 prohibits retaliation against an employee for exercising rights under the law.
72. Defendant retaliated against the Plaintiff by treating him less favorably than other employees, denying his long-term disability request, and terminating his employment after he requested accommodation for his disability.
73. The facts, including the close proximity of in time between Plaintiff's protected activity and the adverse action, show a causal connection between the two.
74. Plaintiff has suffered and will continue to suffer damages as a result of the retaliation for which the Defendant is liable.

Count V
Violation of the Family Medical Leave Act, 29 U.S.C. § 2601 et seq.

75. Plaintiff re-alleges and incorporates by reference the above allegations.
76. Defendant is an employer under the federal Family and Medical Leave Act ("FMLA") 29 § 2611(4) and is subject to its provisions.
77. Plaintiff was entitled to up to 12 weeks of job-protected leave under the FMLA due to his serious health condition.
78. Defendant had a duty to refrain from interfering with, restraining, denying, and or discriminating against an employee for exercising rights under the law.
79. Defendant interfered with Plaintiff's rights under the law by delaying his return to work, denying his long-term disability request, and separating his employment after he went out of work on medical leave.

80. Defendant's conduct in discriminating against the Plaintiff was willful and intentional.

81. Plaintiff has suffered and will continue to suffer damages as a result of the discrimination for which the Defendant is liable.

**COUNT VI
VIOLATION OF MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE
ACT M.G.L. c 175M**

82. Plaintiff re-alleges and incorporates by reference the above allegations.

83. Defendant is an employer under the Massachusetts Paid Family Medical Leave Act ("PFMLA"), G.L. c. 175M § 1, and is subject to its provisions.

84. Plaintiff was a covered individual under the PFML and was entitled to 20 weeks of medical leave to his serious health condition.

85. Section 9(a) of the PFMLA prohibits retaliations "by discharging, firing, suspending, expelling, disciplining... or in any other manner discriminating against an employee for exercising any right to which such employee is entitled under this chapter..."

86. Section 9 (c) of the PFMLA provides for a presumption of retaliation if any negative change is made to an employee's terms or conditions of employment within the 6 month period following an employee's leave.

87. Plaintiff is entitled to a presumption of retaliation under the PFMLA as the Defendant separated his employment within 6 months following his leave under the act.

88. Defendant interfered with Plaintiff's rights under the law by delaying his return to work, denying his long-term disability request, and separating his employment after he went out on PFMLA.

89. Plaintiff has suffered and will continue to suffer damages as a result of the retaliation for which the Defendant is liable.

Request for Relief

WHEREFORE, Plaintiff Kevin Gamst prays for the following:

1. An award of damages in an amount to be determined at trial together with interest;
2. An award of emotional distress to be determined at trial;
3. An award of compensatory or punitive damages to be determined at trial;
4. An award of attorney's fees, interest and costs; and
5. For such other relief as this Honorable Court deems just and equitable.

Jury Demand

The Plaintiff demands a jury trial on all claims herein.

Respectfully submitted,

/s/ Sean R. Cronin

Sean R. Cronin (BBO #692257)

CROIN LAW PC


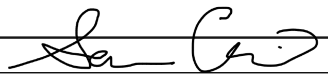
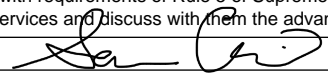
108 Waldemar Ave

East Boston, MA 02128

(617) 213-6883

Sean@Croninlawpc.com

September 20, 2023

CIVIL ACTION COVER SHEET		DOCKET NUMBER	Trial Court of Massachusetts The Superior Court		
			COUNTY Middlesex Superior Court (Woburn)		
Plaintiff	Kevin Gamst		Defendant:	Boston Univeristy	
ADDRESS:	103 Main Street #10 Reading, MA 01864		ADDRESS:	120 Ashford Street, Boston, MA 02215	
Plaintiff Attorney:	Sean Cronin		Defendant Attorney:		
ADDRESS:	108 WALDEMAR AVE East Boston, MA 02128		ADDRESS:		
BBO:	699257		BBO:		
TYPE OF ACTION AND TRACK DESIGNATION (see instructions section on next page)					
CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?		
B22	Employment Discrimination	F	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
*If "Other" please describe: _____					
Is there a claim under G.L. c. 93A?			Is there a class action under Mass. R. Civ. P. 23?		
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A					
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. (Note to plaintiff: for this form, do not state double or treble damages; indicate single damages only.)					
TORT CLAIMS					
A. Documented medical expenses to date					
1. Total hospital expenses		<div style="display: inline-block; text-align: left;"><div style="color: red; font-weight: bold; font-size: 1.2em;">RECEIVED</div><div style="color: red; font-weight: bold; font-size: 1.2em;">9/20/23</div><div style="color: black; font-weight: bold; font-size: 1.2em;">tc</div></div>			
2. Total doctor expenses					
3. Total chiropractic expenses					
4. Total physical therapy expenses					
5. Total other expenses (describe below)					
			Subtotal (1-5): \$0.00		
B. Documented lost wages and compensation to date			\$150,000.00		
C. Documented property damages to date					
D. Reasonably anticipated future medical and hospital expenses					
E. Reasonably anticipated lost wages			\$260,000.00		
F. Other documented items of damages (describe below)					
			TOTAL (A-F): \$410,000.00		
G. Briefly describe plaintiff's injury, including the nature and extent of the injury:					
CONTRACT CLAIMS					
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).					
Item #	Detailed Description of Each Claim				Amount
1.					
Total					
Signature of Attorney/Self-Represented Plaintiff: X 					
					Date: September 20, 2023
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.					
CERTIFICATION UNDER S.J.C. RULE 1:18(5)					
I hereby certify that I have complied with requirements of Rule 5 of Supreme Judicial Court Rule 1:18: Uniform Rules on Dispute Resolution, requiring that I inform my clients about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.					
Signature of Attorney: X 					Date: September 20, 2023

CIVIL ACTION COVER SHEET INSTRUCTIONS — SELECT A CATEGORY THAT BEST DESCRIBES YOUR CASE*

AC Actions Involving the State/Municipality†*

AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

CN Contract/Business Cases

A01 Services, Labor, and Materials (F)
A02 Goods Sold and Delivered (F)
A03 Commercial Paper (F)
A04 Employment Contract (F)
A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
A06 Insurance Contract (F)
A08 Sale or Lease of Real Estate (F)
A12 Construction Dispute (A)
A14 Interpleader (F)
BA1 Governance, Conduct, Internal Affairs of Entities (A)
BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
BB1 Shareholder Derivative (A)
BB2 Securities Transactions (A)
BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
BD1 Intellectual Property (A)
BD2 Proprietary Information or Trade Secrets (A)
BG1 Financial Institutions/Funds (A)
BH1 Violation of Antitrust or Trade Regulation Laws (A)
A99 Other Contract/Business Action - Specify (F)

* See Superior Court Standing Order 1-88 for an explanation of the tracking deadlines for each track designation: F, A, and X. On this page, the track designation for each case type is noted in parentheses.

†* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

‡ Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

D01 Specific Performance of a Contract (A)
D02 Reach and Apply (F)
D03 Injunction (F)
D04 Reform/ Cancel Instrument (F)
D05 Equitable Replevin (F)
D06 Contribution or Indemnification (F)
D07 Imposition of a Trust (A)
D08 Minority Shareholder's Suit (A)
D09 Interference in Contractual Relationship (F)
D10 Accounting (A)
D11 Enforcement of Restrictive Covenant (F)
D12 Dissolution of a Partnership (F)
D13 Declaratory Judgment, G.L. c. 231A (A)
D14 Dissolution of a Corporation (F)
D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party ‡

PA1 Contract Action involving an Incarcerated Party (A)
PB1 Tortious Action involving an Incarcerated Party (A)
PC1 Real Property Action involving an Incarcerated Party (F)
PD1 Equity Action involving an Incarcerated Party (F)
PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
B04 Other Negligence - Personal Injury/Property Damage (F)
B05 Products Liability (A)
B06 Malpractice - Medical (A)
B07 Malpractice - Other (A)
B08 Wrongful Death - Non-medical (A)
B15 Defamation (A)
B19 Asbestos (A)
B20 Personal Injury - Slip & Fall (F)
B21 Environmental (F)
B22 Employment Discrimination (F)
BE1 Fraud, Business Torts, etc. (A)
B99 Other Tortious Action (F)

RP Summary Process (Real Property)

S01 Summary Process - Residential (X)
S02 Summary Process - Commercial/Non-residential (F)

RP Real Property

C01 Land Taking (F)
C02 Zoning Appeal, G.L. c. 40A (F)
C03 Dispute Concerning Title (F)
C04 Foreclosure of a Mortgage (X)
C05 Condominium Lien & Charges (X)
C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

E18 Foreign Discovery Proceeding (X)
E97 Prisoner Habeas Corpus (X)
E22 Lottery Assignment, G.L. c. 10, § 28 (X)

AB Abuse/Harassment Prevention

E15 Abuse Prevention Petition, G.L. c. 209A (X)
E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

E02 Appeal from Administrative Agency, G.L. c. 30A (X)
E03 Certiorari Action, G.L. c. 249, § 4 (X)
E05 Confirmation of Arbitration Awards (X)
E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)
E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)
E08 Appointment of a Receiver (X)
E09 Construction Surety Bond, G.L. c. 149, § 29, 29A (A)
E10 Summary Process Appeal (X)
E11 Worker's Compensation (X)
E16 Auto Surcharge Appeal (X)
E17 Civil Rights Act, G.L. c.12, § 11H (A)
E24 Appeal from District Court Commitment, G.L. c.123, § 9(b) (X)
E94 Forfeiture, G.L. c. 265, § 56 (X)
E95 Forfeiture, G.L. c. 94C, § 47 (F)
E99 Other Administrative Action (X)
Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)
Z02 Appeal Bond Denial (X)

SO Sex Offender Review

E12 SDP Commitment, G.L. c. 123A, § 12 (X)
E14 SDP Petition, G.L. c. 123A, § 9(b) (X)

RC Restricted Civil Actions

E19 Sex Offender Registry, G.L. c. 6, § 178M (X)
E27 Minor Seeking Consent, G.L. c.112, § 12S(X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u>F</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF — On the face of the Civil Action Cover Sheet (or on attached additional sheets, if necessary), the plaintiff shall state the facts on which the plaintiff relies to determine money damages. A copy of the completed Civil Action Cover Sheet, including the statement concerning damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT — If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with the defendant's answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
IF THIS COVER SHEET IS NOT FILLED OUT THOROUGHLY AND
ACCURATELY, THE CASE MAY BE DISMISSED.**